

APPEAL NO. 021300
FILED JULY 2, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was begun on April 15, 2002, but continued and was completed on April 19, 2002. The hearing officer resolved the disputed issue by concluding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the sixth quarter. The appellant (carrier) appeals, arguing that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work and that the claimant has not received an offer of employment because of his own actions, not because of his injury. The appeals file did not contain a response from the claimant.

DECISION

Affirmed.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and regulatory requirements for SIBs. At issue in this case are both the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1) and the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2).

Rule 130.102(e) provides in pertinent part that "[e]xcept as provided in subsection (d)(1), (2), (3), and (4) of this section, an injured employee who has not returned to work and is able to return to work in any capacity shall look for employment commensurate with his or her ability to work every week of the qualifying period and document his or her job search efforts." The job searches of the claimant are documented in the Application for [SIBs] (TWCC-52). The carrier argues that because the claimant has not received a job offer by this point in the claim that it is his own actions that keep him from being employed rather than his injury. The hearing officer specifically found that the claimant has physical limitations from the compensable injury and the resulting surgery, and that the claimant's impairment was a cause of his unemployment. These findings are supported by sufficient evidence and satisfy the direct result requirement.

The claimant had the burden to prove that he made a good faith effort to obtain employment commensurate with his ability to work during the qualifying period for the sixth quarter. The hearing officer found that the claimant sought positions in sales, collections, and other occupations that were apparently within the claimant's educational and physical abilities, and that he looked for work each week of the qualifying period. There is sufficient evidence to support this determination. Entitlement to SIBs is a question for the fact finder. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing

officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **THE AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.**

Michael B. McShane
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge